U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services



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[redacted]

MAR 0 2 2005

FILE: [redacted] Office: Buffalo, New York Date:

IN RE: [redacted]

APPLICATION: Application for Waiver of of the Foreign Residence Requirement under Section 212(e) of the Immigration and Nationality Act; 8 U.S.C. § 1182(e).

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

**DISCUSSION**: The waiver application was denied by the Director, Buffalo District Office, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native of Pakistan. He was admitted to the United States as a J1 Nonimmigrant Exchange Visitor on September 20, 2000 to receive graduate medical training at Miami Children's Hospital in Miami, Florida. The applicant is subject to the two-year foreign-residence requirement under section 212(e) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(e). The record reflects that the applicant [redacted] hereinafter [redacted] a United States citizen (USC), on September 29, 2002. The applicant seeks a waiver of his two-year residence requirement in Pakistan, based on the claim that his wife would suffer exceptional hardship if she moved to Pakistan with the applicant for the two years he is required to live there, or if she remained in the United States.

The Director found that the applicant failed to establish the requisite exceptional hardship for approval of the waiver. The application was denied accordingly. *Decision of the Director*, Buffalo District Office, Buffalo, New York, dated June 15, 2004.

On appeal, Counsel contends that the United States Citizenship and Immigration Services (USCIS) applied an overly strict standard in determining whether the applicant's spouse would suffer exceptional hardship, that the USCIS attached too much significance to the fact that the applicant and his spouse were pursuing medical educations in widely separate locales, and that the USCIS did not attach enough significance to the fact that the applicant's wife would have to discontinue her pre-medical education at Cornell University. In support of the appeal, counsel submitted a brief; declarations from the applicant and [redacted] copies of checks the applicant made out to [redacted] or her father; articles on pediatric rheumatologists in the United States; and a letter from a psychiatrist concernin[redacted] The entire record was considered in rendering this decision.

Section 212(e) of the Act states in pertinent part that:

> No person admitted under section 101(a)(15)(J) or acquiring such status after admission
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> > (i) whose participation in the program for which he came to the United States was financed in whole or in part, directly or indirectly, by an agency of the Government of the United States or by the government of the country of his nationality or his last residence,
> >
> > (ii) who at the time of admission or acquisition of status under section 101(a)(15)(J) was a national or resident of a country which the Director of the United States Information Agency pursuant to regulations prescribed by him, had designated as clearly requiring the services of persons engaged in the field of specialized knowledge or skill in which the alien was engaged, or
> >
> > (iii) who came to the United States or acquired such status in order to receive graduate medical education or training, shall be eligible to apply for an immigrant visa, or for permanent residence, or for a nonimmigrant visa under section 101(a)(15)(H) or section 101(a)(15)(L) until it is established that such person has resided and been physically present in the country of his nationality or his last residence for an aggregate

> of at least two years following departure from the United States: Provided, That upon the favorable recommendation of the Director, pursuant to the request of an interested United States Government agency (or, in the case of an alien described in clause (iii), pursuant to the request of a State Department of Public Health, or its equivalent), or of the Commissioner of the Immigration and Naturalization [now, the Director of Citizenship and Immigration Services (CIS)] after he has determined that departure from the United States would impose exceptional hardship upon the alien's spouse or child (if such spouse or child is a citizen of the United States or a lawfully resident alien), or that the alien cannot return to the country of his nationality or last residence because he would be subject to persecution on account of race, religion, or political opinion, the Attorney General [now the Secretary, Homeland Security, "Secretary"] may waive the requirement of such two-year foreign residence abroad in the case of any alien whose admission to the United States is found by the Attorney General [Secretary] to be in the public interest except that in the case of a waiver requested by a State Department of Public Health, or its equivalent, or in the case of a waiver requested by an interested United States government agency on behalf of an alien described in clause (iii), the waiver shall be subject to the requirements of section 214(l): And provided further, That, except in the case of an alien described in clause (iii), the Attorney General [Secretary] may, upon the favorable recommendation of the Director, waive such two-year foreign residence requirement in any case in which the foreign country of the alien's nationality or last residence has furnished the Director a statement in writing that it has no objection to such waiver in the case of such alien.

In *Matter of Mansour,* 11 I&N Dec. 306 (BIA 1965), the Board of Immigration Appeals stated that, "[E]ven though it is established that the requisite hardship would occur abroad, it must also be shown that the spouse would suffer as the result of having to remain in the United States. Temporary separation, even though abnormal, is a problem many families face in life and, in and of itself, does not represent exceptional hardship as contemplated by section 212(e)."

In *Keh Tong Chen v. Attorney General of the United States,* 546 F. Supp. 1060, 1064 (D.D.C. 1982), the U.S. District Court, District of Columbia stated that:

> Courts deciding [section] 212(e) cases have consistently emphasized the Congressional determination that it is detrimental to the purposes of the program and to the national interests of the countries concerned to apply a lenient policy in the adjudication of waivers including cases where marriage occurring in the United States, or the birth of a child or children, is used to support the contention that the exchange alien's departure from his country would cause personal hardship. Courts have effectuated Congressional intent by declining to find exceptional hardship unless the degree of hardship expected was greater than the anxiety, loneliness, and altered financial circumstances ordinarily anticipated from a two-year sojourn abroad." (Quotations and citations omitted.)

## I. Potential Hardship [redacted] Accompanies the Applicant to Pakistan

First analyzed is the potential hardship [redacted] will experience if she relocates to Pakistan with the applicant for the two years he is required to live there. Counsel maintains that [redacted] will be unable to

continue her pre-medical education at Cornell University in New York. Counsel provided no evidence that [redacted] be unable to attend an appropriate undergraduate university in Pakistan, or that she would be unable to continue pre-medical education upon her return to the United States. A two-year delay in completing an undergraduate degree is a normal result of such a move and does not constitute exceptional hardship.

Counsel asserts that [redacted] will face cultural and linguistic problems in Pakistan. Counsel did not explain what these problems would be or why they would constitute exceptional hardship. The AAO notes that [redacted] USC parents were originally citizens of Pakistan, thus [redacted] may have had exposure to Pakistani culture.

In her August 5, 2004 Declaration, [redacted] expressed concern about her safety in Pakistan. She stated that westerners could be targeted at any time. Counsel provided no evidence concerning the potential danger for Americans in Pakistan. Because [redacted] is of Pakistani ethnicity, she may not stand out as an American.

## II. Potential Hardship if [redacted] in the United States

Next examined is the potential hardship to [redacted] if she stays in the United States during the two years the applicant is required to live in Pakistan. Counsel contends that [redacted] will be unable to continue her college education without the applicant's financial support. Counsel submitted receipts for checks totaling approximately $22,000 that the applicant made out to [redacted] or her father between October 2001 and June 2004. These receipts show that the applicant provided a significant amount of money to [redacted] or to her father; however, they do not establish that [redacted] would be unable to continue her education without the applicant's financial support. Counsel provided no analysis [redacted] overall financial situation or the possibility of her obtaining money from other sources.

Counsel asserts that [redacted] will experience emotional hardship if she is separated from the applicant for two years. Counsel submitted a letter dated August 5, 2004 from [redacted] a psychiatrist, concerning [redacted] emotional condition. [redacted] valuation of [redacted] was based on a "mental status examination. [redacted] motional reaction to the possible separation from the applicant appears to be normal for such a situation and does not constitute exceptional hardship. Moreover, [redacted] condition is treatable. [redacted] oncluded:

> Summary and Recommendations: The primary diagnostic consideration for [redacted] t this point is Adjustment Disorder with Depressed Mood along with anticipatory anxiety about future events. It does seem that she will benefit from some individual and family counseling services aimed at helping her develop coping skills. A trial of anxiolytic medications like alprazolam at 0.5 mg BID would be beneficial. This would be especially helpful with her sleep disturbance.

The AAO notes that the applicant lived in Florida from June 2000 until June 2003, and in Texas from July 2003 until the present. [redacted] as lived in New York throughout this period. Regarding this separation, [redacted] tated in her declaration:

> I can't find words to tell that we wanted to be together, want to be together and will be living together but sometimes things don't turn out as you plan. We tried to be together but it was not possible for us in the past due to our educational/professional commitments.

The fact that the applicant and [redacted] chose to live in separate states for over four years undermines the applicant's claim that [redacted] will experience exceptional emotional hardship if the applicant moves to Pakistan for two years.

Counsel contends that because the applicant's work benefits the United States, a more liberal attitude should be taken in determining exceptional hardship. *Matter of Coffman*, 13 I&N Dec. 206 (DAC 1969). Counsel maintains that the applicant is practicing pediatric rheumatology to help children who suffer from arthritis and other autoimmune conditions. Counsel submitted articles indicating that there is a shortage of doctors practicing pediatric rheumatology in the United States. The AAO acknowledges that the applicant is doing valuable work in the United States; however, this fact does not overcome the finding above that [redacted] will not experience exceptional hardship. Also, *Coffman* can be distinguished from the present case. In *Coffman,* the applicant did not come to the United States to receive training; she came to impart her skills to American teachers. In the instant case, the applicant came to the United States to receive medical training. The decision in *Coffman* also noted that the applicant was in the United States for a short time (90 days) and that she had nearly completed two years residence abroad. In the instant case, the applicant has been in the United States since 2000 and has not completed any residence abroad.

**III. Conclusion**

The AAO finds that the evidence in the record fails to establish that the applicant's wife would experience exceptional hardship if she traveled to Pakistan with the applicant. The AAO also finds that the evidence in the record fails to establish that the applicant's wife would experience exceptional hardship if she remained in the United States while the applicant returned temporarily to Pakistan.

The burden of proving eligibility for a waiver under section 212(e) of the Act rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The AAO finds that in the present case, the applicant has not met his burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.